

broker - not properly licensed 19(a) 23 & 37

BEFORE THE WEST VIRGINIA REAL ESTATE COMMISSION

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WEST VIRGINIA REAL ESTATE COMMISSION,

Complainant,

ATTORNEY GENERAL'S
OFFICE

V.

Complaint No. P-14-001

K. PAIGE TIPANE,
Licensed Real Estate Salesperson
License No. WV-0023678,

Respondent.

CONSENT DECREE

Now comes the Respondent, K. Paige Tipane (hereinafter "Respondent"), and the West Virginia Real Estate Commission (hereinafter "Commission"), by Richard E. Strader, its Executive Director, for the purpose of resolving a complaint filed against Respondent by the Commission. As reflected in this Consent Decree, the parties have reached an agreement in which Respondent agrees and stipulates to the Findings of Fact and Conclusions of Law set forth in this Consent Decree concerning the proper disposition of this matter. The Commission, having approved such agreement, does hereby Find and Order as follows:

FINDINGS OF FACT

1. The Commission is a state entity created by W. Va. Code § 30-40-1 *et seq.*, and is authorized to regulate the conduct of real estate brokers, associate brokers and salespersons.
2. Respondent is a salesperson licensed by the Commission, holding license number WV-0023678.
3. On July 22, 2013, Christopher L. Radcliff and Martha Radcliff ("Complainants") filed a complaint against Respondent and her Broker, Mike Tyree ("Respondent's Broker"), at First

Rem
Costs & dismt + costs

Choice, Inc. in Beckley, West Virginia, regarding a real estate transaction which alleged, among other things, as follows:

- a. Respondent did not show the house, but sent her husband, who is not licensed by this Commission to sell real estate;
- b. Respondent never stepped foot in the house;
- c. Respondent stated Complainants would receive a copy of their bid paperwork to go over before closing, which they did not get;
- d. Certain representations (new vinyl windows and all new plumbing, wiring and roof) posted by First Choice, Inc. and the seller's realtor were misrepresentations;
- e. Fresh paint covered black mold; and
- f. Respondent advised Complainants not to waste money on an inspection since the appraisal was good.

4. Respondent and Respondent's Broker were served a copy of the Complaint and timely responded to the allegations with supporting documents.

5. Respondent states that she showed Complainants the home, but admits that a return view was requested and that her husband, who acts as Respondent's assistant, met Complainants; that she intended to join them but was unable to, and that her husband only gave them access to the house and did nothing to negotiate the sale.

6. Respondent stated that she explained the paragraph in the contract regarding a buyer's right to receive inspections, that she never discourages such inspections, and that Complainants signed a disclosure and counteroffer presented by the selling agent that the home was to be sold in "as is" condition with no repairs.

7. Several months after the closing, Respondent was contacted by Complainants regarding a contractor's report addressing the alleged problems, which Respondent requested but never received.

8. Respondent's Broker confirmed statements in Respondent's response and stated that it was not the policy of his company to advise people not to have home inspections

9. Based on the responses received, at its meeting on September 30, 2013, the Commission dismissed the complaint against Respondent's Broker and found probable cause to proceed against Respondent solely with regard to Respondent's allowing her unlicensed husband to work as her assistant in connection with the sale of real estate.

10. The parties have agreed to settle the Complaint informally through the entry of this Consent Decree.

11. The Commission has incurred expenses in the prosecution of this complaint in an amount in excess of \$260.00, which expenses relate solely to the Commission's legal expenses and do not include costs reflecting time expended by Commission staff and other expenses incurred by the Commission.

Conclusions of Law

1. West Virginia Code § 30-40-1 *et seq.*, vests the Commission with the authority and responsibility to regulate real estate brokers, associate brokers and salespersons in the State of West Virginia.

2. West Virginia Code § 30-40-7(l) gives the Commission all the discretionary power to "impose one or more sanctions as considered appropriate in the circumstances for the discipline of a licensee. Available sanctions include, but are not limited to, denial of a license or renewal thereof, administrative fine not to exceed one thousand dollars per day per violation, probation, revocation, suspension, restitution, require additional education, censure, denial of future license,

downgrade of license, reprimand or order the return of compensation collected from an injured consumer.”

3. West Virginia Code § 30-40-19(a)(23) provides that the Commission may revoke, suspend or otherwise discipline a licensee if the licensee “[c]ontinues in the capacity of or accepts the services of any broker, associate broker or salesperson who is not properly licensed.”

4. West Virginia Code § 30-40-19(a)(37) provides that the Commission may revoke, suspend or impose any other sanction against a licensee if the licensee “(e)ngages in any act or conduct which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing.”

5. By utilizing her husband, who has no license issued by this Commission, as an assistant in connection with real estate transactions, Respondent violated West Virginia Code § 30-40-19(a)(23), which violation also demonstrates improper dealing, in violation of West Virginia Code § 30-40-19(a)(37).

6. The Commission may assess administrative costs, which shall be placed in the account of the Commission. Any fine shall be deposited in the state treasury’s general revenue account. West Virginia Code § 30-1-8(a).

Consent

By signing below, Respondent agrees to the following:

1. Respondent has had the opportunity to consult with counsel and executes this Consent Decree voluntarily, freely, without compulsion or duress and mindful that it has legal consequences. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to make this settlement other than as set forth herein. Respondent acknowledges that

she may pursue this matter through appropriate administrative proceedings and is aware of her legal rights regarding this matter, but intelligently and voluntarily waives such rights.

2. Respondent consents to the findings above and to the entry of the following Order:

Order

On the basis of the foregoing, the Commission hereby ORDERS as follows:

1. Respondent is REPRIMANDED.
2. Respondent is ORDERED to CEASE AND DESIST from utilizing her husband or any other unlicensed person as an assistant in connection with Respondent's real estate sales activities.
3. Within 30 days of the entry of this Consent Decree, Respondent shall pay the Commission's costs in this matter in the amount of two hundred sixty dollars (\$260.00) by check made payable to the State of West Virginia and sent directly to the Commission Office. *CC or MD*
4. Any deviation from the requirements of this Consent Decree, without the prior written consent of the Commission, shall constitute a violation of an Order of the Commission and may, upon action by the Commission, result in the summary suspension of Respondent's license until such time as Respondent achieves full compliance.

The Commission shall immediately notify Respondent via certified mail of the alleged violation of the Consent Decree and the summary suspension of Respondent's license. Respondent may request probationary reinstatement of the license through renewal of this Consent Decree, or execution of a new Consent decree which may contain different or additional terms. The Commission is not bound to comply with Respondent's request for probationary reinstatement.

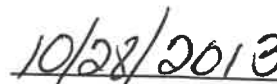
In the event Respondent contests the allegations of violation of the Consent Decree resulting in the suspension of Respondent's license, Respondent may request a hearing to seek reinstatement

of her license. Any such hearing shall be scheduled and conducted in accordance with the provisions of West Virginia Code §§ 30-1-8 and 30-40-1 *et seq.* and any procedural rules promulgated by the Commission.

At its discretion, the Commission also may schedule a hearing on its own initiative for the purpose of allowing the Commission to consider further discipline against Respondent based upon Respondent's violation of this Order of the Commission.

AGREED TO BY:



K. PAIGE TIPANE


DATE

ENTERED into the records of the Real Estate Commission this:

30th day of October, 2013.

WEST VIRGINIA REAL ESTATE COMMISSION,

By: 
RICHARD E. STRADER,
EXECUTIVE DIRECTOR